

EXHIBIT 3

Hearing

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343 (JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to
notice before Renee A. Meyers, Registered Professional
Reporter and Notary Public, in the law offices of BLANK
ROME, LLP, 1201 North Market Street, Wilmington,
Delaware, on Thursday, December 28, 2006, beginning at
approximately 11:30 p.m., there being present:

BEFORE: VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

THE BAYARD FIRM
RICHARD D. KIRK, ESQ.
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Wilmington, Delaware 19899
for Plaintiffs

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<p>1 happy to raise that with my client, and if there are</p> <p>2 materials, to make them available.</p> <p>3 MR. AMBROZY: And just to clarify, we</p> <p>4 have had this discussion multiple times, Scott, and, as</p> <p>5 you have told us in the past, all you know is that the</p> <p>6 monitors show up in a box and that's all you know. We</p> <p>7 have had this discussion before.</p> <p>8 But you did parse your sentence to say</p> <p>9 that monitors sold by Viewsonic. Our point is monitors</p> <p>10 that Viewsonic ships to a third party, such as Dell or</p> <p>11 HP, and then make their way into the United States under</p> <p>12 the Dell label, that's what we are concerned with.</p> <p>13 SPECIAL MASTER POPPITI: With that fine</p> <p>14 tuning, I would like some representation as to when you</p> <p>15 can learn from your clients, Mr. Miller?</p> <p>16 MR. MILLER: I guess what I would like</p> <p>17 is, and we have not had this discussion, Rel, about Dell</p> <p>18 products or HP products or something like that, you</p> <p>19 obviously have something specific, if you can give that</p> <p>20 to me, I will attempt to get a response from my client</p> <p>21 within two weeks.</p> <p>22 MR. AMBROZY: We will do that.</p> <p>23 MR. MILLER: Send me something and I</p> <p>24 will talk to them and we will investigate it and give the</p>	<p>1 together some authority over the lunch break, let's do</p> <p>2 2:15.</p> <p>3 (Recess taken.)</p> <p>4 SPECIAL MASTER POPPITI: Counsel, we are</p> <p>5 back on record. I did receive an email from Ms. Mason,</p> <p>6 and that contained, as she suggested, a summary of the</p> <p>7 cases and attached the cases. And I received -- I don't</p> <p>8 know whether this came by fax, there is no email cover to</p> <p>9 it, excerpts from the OEM agreements produced by</p> <p>10 Viewsonic.</p> <p>11 MR. KIRK: I did send an email to Your</p> <p>12 Honor. That was a Word document that was attached to my</p> <p>13 email with nothing else. We had understood the Court</p> <p>14 wanted case citations and not argument, so we didn't</p> <p>15 furnish descriptions or arguments.</p> <p>16 SPECIAL MASTER POPPITI: And that was a</p> <p>17 two-page document behind the email; is that correct,</p> <p>18 Mr. Kirk?</p> <p>19 MR. KIRK: Yes, your Honor.</p> <p>20 SPECIAL MASTER POPPITI: Thank you.</p> <p>21 Let's go back to where we left off with respect to the</p> <p>22 submittals, and I don't know whether we finished with</p> <p>23 technical and mounting related discovery.</p> <p>24 MR. AMBROZY: We did, your Honor.</p>
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<p>1 report back within two weeks of when we get it.</p> <p>2 MR. AMBROZY: We will work with you.</p> <p>3 SPECIAL MASTER POPPITI: And what I</p> <p>4 would like to do is I would simply like to be advised,</p> <p>5 not with respect to the detail, unless you think it's</p> <p>6 important for me to have the detail, that you have made</p> <p>7 the request and that the request has been responded to</p> <p>8 within two weeks. If I don't need to know the detail,</p> <p>9 you will know whether or not to share it with me or not</p> <p>10 to share it with me.</p> <p>11 MR. MILLER: Your Honor, I guess the,</p> <p>12 you know, the point I also want to make is I want to make</p> <p>13 sure that what I get from Mr. Ambrozy, that I can put it</p> <p>14 into the context of a request for production of</p> <p>15 documents. If they didn't ask for it, I don't believe I</p> <p>16 am obligated to produce it.</p> <p>17 MR. AMBROZY: We all can agree with</p> <p>18 that.</p> <p>19 SPECIAL MASTER POPPITI: I certainly</p> <p>20 understand that. Mr. Ambrozy, do you agree?</p> <p>21 MR. AMBROZY: Absolutely, Your Honor.</p> <p>22 SPECIAL MASTER POPPITI: With that, my</p> <p>23 watch isn't necessarily the best indicator, I have 1:35,</p> <p>24 about. Let's break until, since I asked you to pull</p>	<p>1 SPECIAL MASTER POPPITI: The next would</p> <p>2 be L.G. Phillips' Motion to Compel Viewsonic Re: Advice</p> <p>3 of Counsel, Duty of Care. That is by submittal date of</p> <p>4 9/27, and a response of 10/18.</p> <p>5 MR. CHRISTENSON: Thank you, Your Honor.</p> <p>6 I will be directing this application.</p> <p>7 SPECIAL MASTER POPPITI: Thank you.</p> <p>8 MR. CHRISTENSON: Your Honor, I think</p> <p>9 this application presents a fairly focused and narrow</p> <p>10 issue for you. The background on this application is</p> <p>11 that one of the allegations of the plaintiff in this case</p> <p>12 is that the defendants have failed to exercise due care</p> <p>13 since the time that they learned of the patent in suit,</p> <p>14 so we are alleging willful infringement which would allow</p> <p>15 the Court, in its discretion, to award enhanced damages</p> <p>16 and attorney's fees if proven.</p> <p>17 As we say in our papers, when a party</p> <p>18 learns of a patent, a party has a duty, an affirmative</p> <p>19 duty, to avoid infringing that patent, and, so that is</p> <p>20 certainly an issue in the case. We are seeking discovery</p> <p>21 in that issue.</p> <p>22 There has not been any bifurcation in</p> <p>23 the case. Viewsonic confirms, in its papers, that it's</p> <p>24 not seeking to bifurcate discovery. So, effectively,</p>

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<p>1 Viewsonic is seeking to stay discovery on the issue of</p> <p>2 willfulness.</p> <p>3 However, as you may recall, Your Honor,</p> <p>4 we have had prior motion practice in which Viewsonic has</p> <p>5 compelled LPL to provide a supplemental response to an</p> <p>6 interrogatory propounded by Viewsonic on the issue of</p> <p>7 willfulness, specifically, LPL was required to supplement</p> <p>8 its response to interrogatory No. 8 regarding the factual</p> <p>9 basis for LPL's allegations.</p> <p>10 So, obviously, we contend that there</p> <p>11 shouldn't be a one way stay of discovery on willfulness.</p> <p>12 It's -- it's part of the case. It's the subject of</p> <p>13 affirmative discovery sought and compelled by Viewsonic,</p> <p>14 and, likewise, we are entitled to obtain discovery that's</p> <p>15 directly relevant to the defense.</p> <p>16 We are seeking to know what, if</p> <p>17 anything, Viewsonic has done to exercise due care and we</p> <p>18 are seeking discovery regarding any advice of counsel or</p> <p>19 legal opinions that Viewsonic is relying on and that it</p> <p>20 contends shows that it acted reasonably in -- after</p> <p>21 learning of the patents.</p> <p>22 So, the question is not what might</p> <p>23 happen in the future. Viewsonic talks about postponing</p> <p>24 indefinitely the decision whether to invoke advice of</p>	<p>1 scope of the attorney/client privilege, that they have</p> <p>2 communicated with their suppliers, that they have</p> <p>3 retained counsel to evaluate the matter and defend the</p> <p>4 litigation, that they have consulted with technical</p> <p>5 experts and presented his declaration, they successfully</p> <p>6 opposed the preliminary injunction motion that was</p> <p>7 brought by LPL, they were able to ascertain and develop</p> <p>8 evidence in the proceeding in the United Kingdom that</p> <p>9 dealt with the sister patent to the patents in suit here</p> <p>10 that dealt with the exact same technology, and, in large</p> <p>11 part, some of the same products that are accused of</p> <p>12 infringement here, that that evidence and admissions from</p> <p>13 the experts employed by LPL are applicable to matters</p> <p>14 that are being relied upon by Viewsonic as well as the</p> <p>15 Court's decision there, which was recently affirmed of</p> <p>16 mild infringement and invalidity of the patent.</p> <p>17 The real issue here is what is the scope</p> <p>18 of advice they received from counsel post initiation of</p> <p>19 the litigation, which is all clearly privileged material.</p> <p>20 And they are trying to obtain that information from</p> <p>21 Viewsonic at a time when the Court has indicated that</p> <p>22 discovery that relates to claim construction issues is</p> <p>23 properly deferred until after the Markman ruling.</p> <p>24 SPECIAL MASTER POPPITI: How does it</p>
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<p>1 counsel until after claim construction is concluded, but</p> <p>2 we are not talking about what might happen in the future</p> <p>3 with respect to the Court. We are talking about right</p> <p>4 now and in the past: Has Viewsonic been relying on any</p> <p>5 advice of counsel? And, if so, we are entitled to</p> <p>6 discovery on that advice. Similarly, have they taken any</p> <p>7 steps, since they learned of the patents, to exercise due</p> <p>8 care? If so, we are entitled to that discovery.</p> <p>9 SPECIAL MASTER POPPITI: Who is arguing,</p> <p>10 please?</p> <p>11 MR. MILLER: Scott Miller.</p> <p>12 SPECIAL MASTER POPPITI: Mr. Miller.</p> <p>13 MR. MILLER: Well, let's put the</p> <p>14 background into the proper perspective so Your Honor</p> <p>15 knows where we stand.</p> <p>16 We have advised LPL that we were not</p> <p>17 aware of these patents prior to the date on which they</p> <p>18 served the complaint on Viewsonic, so there is not a</p> <p>19 wealth of information that lead up to the initiation of</p> <p>20 Viewsonic's response to the litigation that would deal</p> <p>21 with any kind of opportunity to get advice of counsel or</p> <p>22 opinions to rely on.</p> <p>23 We have also advised LPL of various</p> <p>24 actions that Viewsonic has taken that are not within the</p>	<p>1 have to do with claim construction?</p> <p>2 MR. MILLER: Well, the advice of counsel</p> <p>3 would clearly construe the claims and apply them to the</p> <p>4 products. And I can't imagine something more directly</p> <p>5 applicable to the issues involving our analysis and</p> <p>6 strategy and thinking regarding the claim construction</p> <p>7 process than -- and what is -- that process is involved</p> <p>8 than getting into the advice and analysis of counsel with</p> <p>9 regard to the patents in suit and how they might apply</p> <p>10 to, at that time, only product that had been identified</p> <p>11 as infringement.</p> <p>12 It just seems to us, you know, matter of</p> <p>13 factly unfair to compel Viewsonic to provide information</p> <p>14 from, you know, to make a decision about whether it's</p> <p>15 going to waive the privilege of activities and advice</p> <p>16 that may have been given to them from litigation counsel</p> <p>17 relating to the patents in suit and the scope of the</p> <p>18 claims and how they might be applied to products in the</p> <p>19 -- prior to the Court telling us what the claims mean.</p> <p>20 It clearly will give them an undue advantage during the</p> <p>21 claim construction process, and will, you know, is not</p> <p>22 fair to Viewsonic to put them at the situation of</p> <p>23 identifying that information and Viewsonic having to</p> <p>24 waive that information prior to the date on at least</p>

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<p>1 which get some assertion as to what products are at 2 issue.</p> <p>3 SPECIAL MASTER POPPITI: I guess what I 4 don't have the benefit of is a log that describes the 5 nature of the communication, and, if important beyond the 6 log, the actual documents, themselves, which you say have 7 been generated by litigation counsel after suit was 8 filed. You know, that certainly gets my attention.</p> <p>9 MR. MILLER: The parties has never 10 exchanged privilege log. I think the one thing they were 11 in agreement on was, I believe, that they weren't going 12 to log litigation oriented communications post filing of 13 the complaint, and, so, you know, we can -- it's never 14 been requested.</p> <p>15 I don't think that, you know, I don't -- 16 if it's necessary to prepare that kind of a log, you 17 know, we could do so, but we have advised them that 18 Viewsonic does not have an independent opinion of counsel 19 directed to the -- the issues of infringement or validity 20 other than what advice they received from counsel of 21 record. And that's in our interrogatory response.</p> <p>22 SPECIAL MASTER POPPITI: Right.</p> <p>23 MR. MILLER: And, so, the real question 24 here is: You know, is it fair to put Viewsonic in the</p>	<p>1 SPECIAL MASTER POPPITI: Just give me a 2 moment. I want to pull those. I am going to put you on 3 hold.</p> <p>4 MR. CHRISTENSON: Thank you. (Off the record.)</p> <p>5 SPECIAL MASTER POPPITI: Counsel, I am 6 back on. Let me ask this question: In looking at the 7 Viewsonic's answer, and I don't know whether the answer 8 has been amended, the affirmative defense has not been 9 raised in the answer; that's correct, is it not?</p> <p>10 MR. MILLER: That's correct.</p> <p>11 SPECIAL MASTER POPPITI: Has it been 12 raised at all?</p> <p>13 MR. MILLER: Not at this point.</p> <p>14 SPECIAL MASTER POPPITI: Well, when you 15 say "not at this point," at this juncture, why isn't it 16 waived?</p> <p>17 MR. MILLER: I think we would -- I 18 think, at this point, we would need to go back to Judge 19 Farnan and ask for permission to do so. We have 20 responded to the interrogatories, discussing how we have 21 acted reasonably in the face of the charge of 22 infringement that came to our notice first with the 23 complaint, and because we do not have a separate opinion 24</p>
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<p>1 position of having to decide to waive advice it may have 2 received from its litigation counsel on these issues 3 after the litigation was filed?</p> <p>4 And it doesn't seem that, you know, 5 there was ever a need to prepare that log of post filing 6 communications between the, you know, post filing of the 7 complaint communications based on the discussions the 8 parties have had, and it's certainly been my experience 9 that -- you know, in fact, I can't remember a case where 10 we ever were compiling a log of communications post 11 filing.</p> <p>12 SPECIAL MASTER POPPITI: Post filing, 13 and I understand that.</p> <p>14 What's the interrogatory answer again, 15 please?</p> <p>16 MR. CHRISTENSON: Your Honor, the 17 interrogatory answer that LPL was compelled to 18 supplement, with respect to this issue of willfulness 19 was, I believe, interrogatory No. 8. The interrogatories 20 that are implicated by LPL's motion here are 21 interrogatories 5, 6, and 7.</p> <p>22 SPECIAL MASTER POPPITI: Right.</p> <p>23 MR. CHRISTENSON: And then we have a 24 handful of document requests implicated as well.</p>	<p>1 of counsel at the time the answer was filed, we didn't 2 allege the defense. If Judge Farnan would allow that to 3 come into the case at that point in time --</p> <p>4 SPECIAL MASTER POPPITI: Therein lies my 5 concern. I have the obligation to manage discovery, 6 which I haven't done up to this point, which I will do in 7 the future. I have got the obligation to deal with 8 discovery disputes, but I certainly don't have the 9 authority to, outside the context of discovery disputes 10 and outside the context of Rule 37 sanctions, I don't 11 have the authority to impact on issues that are 12 ultimately tried.</p> <p>13 And it seems to me that if there is a 14 question, and I think there is a question of waiver, and 15 the flip side of that question is whether or not 16 Viewsonic can convince the Court to permit the 17 affirmative defense to be pled at this point or any later 18 point, I think that's got to be brought to the attention 19 of Judge Farnan before I begin to wade into the water and 20 permit access to this information.</p> <p>21 I just don't think it is, I will use the 22 word "ripe," I may back off of that, but I don't think 23 it's ripe for my consideration given the state of the 24 pleadings.</p>

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<p>1 Mr. Christenson.</p> <p>2 MR. CHRISTENSON: Your Honor, it's</p> <p>3 correct to say that they have not alleged it, I don't</p> <p>4 believe, as an affirmative defense, and the time to --</p> <p>5 things have expired under the scheduling order.</p> <p>6 SPECIAL MASTER POPPITI: I understand</p> <p>7 that.</p> <p>8 MR. CHRISTENSON: And I guess, you know</p> <p>9 from our standpoint, we had expected to obtain prompt</p> <p>10 discovery to the extent this was an issue in the case,</p> <p>11 but to the extent it's not an issue in the case, then I</p> <p>12 think the appropriate way to approach it would be to, if</p> <p>13 and when there is any attempt to bring it into the case</p> <p>14 in the future, given where we are and given our upcoming</p> <p>15 deposition schedule, etcetera, we would, obviously,</p> <p>16 oppose it based, in part, on the pressures resulting from</p> <p>17 where we are in the case.</p> <p>18 SPECIAL MASTER POPPITI: Well, there is</p> <p>19 no question that I have the authority to draw the</p> <p>20 parameter around what is appropriate discovery going</p> <p>21 forward. And given the state of this record, without</p> <p>22 making a determination on this issue, it seems to me it</p> <p>23 would be an uphill climb for Viewsonic to -- for there to</p> <p>24 be any discovery on this issue if it's not properly pled.</p>	<p>1 have been pled.</p> <p>2 MR. MILLER: Thank you, Your Honor.</p> <p>3 SPECIAL MASTER POPPITI: Thank you, sir.</p> <p>4 Let me just get some papers out of my way. Thank you.</p> <p>5 Next. I promised the court reporter we'd be out of here</p> <p>6 by midnight and she was very skeptical until we just</p> <p>7 dealt with that last issue.</p> <p>8 MR. CHRISTENSON: I am glad we are</p> <p>9 making progress.</p> <p>10 MR. MILLER: That's a joke, too, Your</p> <p>11 Honor.</p> <p>12 SPECIAL MASTER POPPITI: That's a joke</p> <p>13 as well, yes. Thank you.</p> <p>14 MR. MILLER: Your Honor, I think --</p> <p>15 SPECIAL MASTER POPPITI: Yes,</p> <p>16 Mr. Miller.</p> <p>17 MR. MILLER: The next chronological</p> <p>18 motions would be those filed by Viewsonic, I believe.</p> <p>19 SPECIAL MASTER POPPITI: That is</p> <p>20 correct. The next motion would be Viewsonic's Motion to</p> <p>21 Compel LG, Re: Components, etcetera. It's dated 10/3,</p> <p>22 2006, and the response was 10/25, 2006.</p> <p>23 MR. MILLER: Let me -- we have been</p> <p>24 discussing a lot of the requests kind of in categories</p>
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<p>1 I am looking at the scheduling order,</p> <p>2 Mr. Christenson. Let me -- and I know it's been</p> <p>3 modified. Let me just look here.</p> <p>4 What paragraph are you referring to with</p> <p>5 respect to amending the pleadings?</p> <p>6 MR. CHRISTENSON: I apologize, Your</p> <p>7 Honor. I do not have that at my fingertips, but it was</p> <p>8 in the -- the date is in the original --</p> <p>9 SPECIAL MASTER POPPITI: It's in the</p> <p>10 original?</p> <p>11 MR. CHRISTENSON: Yes, sir.</p> <p>12 MR. MILLER: It's in paragraph seven,</p> <p>13 Your Honor.</p> <p>14 SPECIAL MASTER POPPITI: I am getting</p> <p>15 there. I see it. Thank you, Mr. Miller.</p> <p>16 Yeah, it says, "All motions to amend the</p> <p>17 pleadings shall be filed on or before January 17th,</p> <p>18 2006." We are coming up to an anniversary.</p> <p>19 I mean, I -- this matter is not ripe for</p> <p>20 consideration because the -- the pleadings do not join</p> <p>21 the issue, and if it needs to be raised with Judge</p> <p>22 Farnan, my sense is you better do it -- you better do it</p> <p>23 quickly. But my ruling will be that it is not ripe for</p> <p>24 consideration given the parameters of the issues that</p>	<p>1 and I will do the same here to see if we can at least</p> <p>2 focus the issues.</p> <p>3 These first set of requests deal with</p> <p>4 mounting methods and structures that are -- that</p> <p>5 Viewsonic seeks to discover vis-a-vis LPL.</p> <p>6 SPECIAL MASTER POPPITI: Mr. Miller,</p> <p>7 before you -- before you launch here, let me just remind</p> <p>8 myself of something that I made a note on. Just one</p> <p>9 moment, please. Just give me one -- give me the courtesy</p> <p>10 of putting you on hold again. I have got to find the</p> <p>11 document. I made the note but I can't find the document.</p> <p>12 Hold one sec.</p> <p>13 (Off the record.)</p> <p>14 SPECIAL MASTER POPPITI: Counsel, I am</p> <p>15 not having the kind of success that I should have, but I</p> <p>16 do recall it was either correspondence or it was in the</p> <p>17 submittal that Miss Mason filed. My note reads, to</p> <p>18 myself, at page 10, I had some impression that LPL was --</p> <p>19 well, that would make sense -- was willing to produce the</p> <p>20 documents. So wait a minute. I am looking -- I am</p> <p>21 looking at the wrong document. Hold one sec. Actually,</p> <p>22 this is Mr. Kirk's, but it was in response to</p> <p>23 Ms. Mason's.</p> <p>24 If, counsel, you will look at Plaintiff</p>